Filed 3/26/19 In re M.H. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re M.H. et al., Persons Coming Under the Juvenile Court Law.	
TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. RICHARD H., Defendant and Appellant.	F077787 (Super. Ct. Nos. JJV070638C, JJV070638D, JJV070638E, JJV070638F) **OPINION**

APPEAL from orders of the Superior Court of Tulare County. Hugo J. Loza, Judge.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Deanne H. Peterson, County Counsel, John A. Rozum and Amy-Marie Costa, Deputy County Counsel, for Plaintiff and Respondent.

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Richard H. (father) appeals from the June 21, 2018, juvenile court orders made following a Welfare and Institutions Code section 366.26[1] hearing, ordering two of his four children into legal guardianship and dismissing dependency, and terminating his parental rights as to his two other children, freeing them for adoption. Father contends the juvenile court erred in finding his youngest two children adoptable. He also contends the juvenile court abused its discretion when it failed to continue the section 366.26 hearing to allow relatives to complete an application for placement of all four children. We affirm.

STATEMENT OF THE CASE AND FACTS

Background

E.H. was born prematurely in May of 2017. He tested positive for drugs and suffered from numerous medical complications and was transferred to a children's hospital. Mother tested positive for methamphetamine and methadone. She admitted using drugs throughout her pregnancy and failing to receive prenatal care. Mother was evasive with hospital staff about the identity of E.H.'s father and her home address.

When the social worker made contact with mother and her five older children (ages 10 and under) at their home, the home had no furniture and mother and the children were sharing a bed or sleeping on the floor on blankets. Maternal grandfather and paternal grandmother, as well as other relatives, were also present. Mother blamed her drug use on a troubled relationship with father. Five-year-old M.H. reported that she "knew how to change her sister's diaper because she had been doing it for a long time" and that mother drank beer "morning and night."

With E.H. still hospitalized, the five older children were taken into protective custody. A team decision meeting, which included mother and relatives, was held and it

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

was determined that the children would stay in protective custody while efforts were made to place the children with relatives through the resource family approval (RFA) process.

Detention

The Tulare County Health and Human Services Agency (agency) filed a section 300 petition alleging mother's drug use, including during pregnancy, and her failure to provide adequate food, clothing and shelter for her five older children placed them at risk of harm. As to father, the petition alleged his failure to protect his children (M.H., J.H., L.H., and E.H.) from mother's substance abuse placed them at risk of harm. The petition alleged father, as well as the fathers of the two oldest children, M.A. and G.A.[2], were incarcerated and unable to arrange appropriate care for their children.

The detention report requested E.H. also be detained at the time of the hearing, as he was still in the hospital with an undetermined release date. The report listed a number of potential relatives for placement of one or more of father's four children at issue here: Abel A. and Dolores W., the maternal grandfather and step-grandmother for L.H.; Daisy and Manuel P., a paternal aunt and uncle, for M.H.; Gloria V., a maternal great-aunt for all the children; and Linda A., the maternal grandmother for all children. These names were based on a "Relatives to Consider" form completed by mother at the end of May 2017. All relatives on the list were contacted, but none were able to take the children at that time.

The detention hearing was held on June 1, 2017. Mother appeared and was appointed counsel. Based on the fact that mother and father were married, father was found to be the presumed father of the youngest four children: M.H., J.H., L.H., and E.H. Contested jurisdiction was set for July 11, 2017.

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[2] Neither M.A. nor G.A. are at issue in this appeal. Mother and both M.A. and G.A.'s father are not parties to this appeal.

Jurisdiction

The report prepared for jurisdiction recommended mother be granted six months of reunifications services. The report recommended father be denied services pursuant to section 361.5, subdivision (b)(13).[3]

By this time, G.A., L.H., and E.H. were placed together in a licensed foster home; M.A., M.H., and J.H. were placed together in another licensed foster home, until M.A. had to be moved due to aggressive and sexualized behavior towards his sisters. Mother's whereabouts became unknown and she could not be located to authorize mental health services for M.A. or his sisters.

Father's criminal history was chronicled, including his current charges for violation of probation for use or being under the influence of a controlled substance; burglary; vandalism; and unauthorized entry of a dwelling. The current charges were a violation of a 2016 drug court sentence. Father also had numerous other charges, including a previous 2013 drug court sentence, which was deemed "unsuccessful" in 2015.

Visits with father were to be in accordance with the rules of the institution in which he was housed. Since the Tulare County Jail did not allow visits with infants, E.H. and L.H. were not able to visit with father. Mother was scheduled for visits, but did not attend. Instead, the time was used for sibling visitation.

Both M.A. and G.A. stated they wanted to live with Rachel and Monte G., who were paternal grandparents to M.A. and paternal aunt and uncle to G.A. When father was asked about placement for his four children, he deferred to mother, but eventually stated he preferred either maternal grandmother, maternal great-grandmother, or Tina P.

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3 Section 361.5, subdivision (b)(13) provides that a parent need not be offered reunification services if the parent has a history of extensive drug use and has resisted prior court-ordered treatment.

At the July 11, 2017, contested jurisdiction hearing, mother appeared, executed a reading of waiver of rights form, and submitted on the social worker reports as to the allegation in the section 300 petition. Father appeared, submitted on the petition and reports, and gave an oral waiver of rights, during which father asked if there was "still a way our kids can go to our family members?" The juvenile court assured father that the court's first priority was always to place a child with a suitable relative if available. Later in the hearing, father's counsel stated father had not been contacted by the social worker but he did have a cousin, Jessica H., who lived in Los Angeles and was willing to take the children for placement.

Disposition was set for August 22, 2017.

Disposition

An addendum report prepared for the disposition hearing stated mother had not made herself available since the detention hearing and had not signed releases for the children to receive services. M.A. was in need of mental health services, as he was now also hurting animals at his caregiver's home.

The agency contacted father's cousin, Jessica H., but she was not sure if she and her husband could commit to taking the children. She said she would think about it and call back but had not done so.

At the disposition hearing August 22, 2017, father requested the matter be continued until his criminal matter was resolved, although he was still pretrial. The juvenile court declined, stating father could file a section 388 petition to request services if and when his criminal matter was resolved. The juvenile court adopted the agency's recommended findings and orders, including denial of services to father pursuant to section 361.5, subdivision (b)(13). A six-month review was set for February 8, 2018.

Six-Month Review

The report prepared for the six-month review recommended services to mother be terminated and a section 366.26 hearing set. Mother's whereabouts were again unknown

and she had not visited the children or made any progress in her service plan. The report stated M.A. and G.A. were placed with M.A.'s relative care providers in October 2017; M.H. and J.H. were placed in a new foster home in December 2017 and adjusting well; and L.H. and E.H. remained in their original placement made in May 2017 and were bonded to the foster parents.

The children were visiting with each other twice a week and enjoyed the visits. Father remained incarcerated. He had once weekly video visits with M.H., J.H. and L.H., although L.H. had nightmares after the visits. The children also visited their paternal grandparents monthly and had no issue with those visits.

An adoption assessment attached to the report stated all six children were adoptable, but it noted M.A. and G.A. were placed with relatives who only wished to provide guardianship. L.H. and E.H.'s foster parents wished to adopt them. It was noted that any family selected for adoption must be open to and supportive of sibling visitation. M.H. and J.H. were not currently in an adoptive home, but they liked their new foster home and were excited to see their older brothers at a movie night event.

At the review hearing February 8, 2018, father appeared, but was still in custody. While father's counsel submitted on the report, she stated he had new relatives to suggest for placement that were "close" to the children. According to counsel, father's "brother-in-law" Joshua A. was willing to "take" M.H. and J.H. and his sister, Valerie H., could "likely be a guardian" for L.H. and E.H. Father stated he provided these names to the social worker in a packet he filled out. The cousin, whom he had originally named and was "supposed" to take them, lived too far away. Father's counsel reiterated that father had said the children "know these relatives." But counsel for the children questioned how well the children knew these relatives, as E.H. was detained at birth and L.H. was 16 months old at detention.

After some adjustment in the visitation orders, the juvenile court terminated services to mother and set a section 366.26 hearing for May 29, 2018. Father was given notice of the necessity to file a writ, but no writ petition was filed.

Section 366.36 Hearing

The section 366.26 report recommended guardianship of M.A. and G.A. be granted with their relative caregivers. For M.H. (six years old) and J.H. (four years old), it recommended non-relative guardianship with the current foster parents. M.H. and J.H. were said to have a close bond with their current foster parents and the foster parents' extended family.

For L.H. (two years old) and E.H. (one year old), it recommended termination of parental rights and adoption with the current foster parents as the proposed adoptive parents. L.H. and E.H. had been in their first and only placement since May of 2017, for over a year. L.H. was physically and emotionally healthy and developing in an age-appropriate manner. E.H. was healthy and a Regional Center client, receiving services on a weekly basis in the foster parents' home. Both were bonded with their caregivers and their needs were being met. The foster family who wished to adopt them was willing to remain in contact with their older siblings.

The report stated that, on April 9, 2018, seven weeks before the scheduled section 366.26 hearing, the girlfriend[4] of a maternal uncle[5] contacted the agency and requested guardianship, not adoption, of all four of the younger children. Girlfriend was asked to have the uncle contact the agency, as he was the actual relative. Three weeks later, on April 30, 2018, the uncle contacted the agency to begin the RFA process. A social worker who met with the couple on May 2, 2018, learned that they had attended an

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4 The girlfriend is sometimes referred to as an aunt.

5 It appears this maternal uncle is Joshua A., who was mentioned by father at the February 8, 2018, six-month review hearing as someone who could possibly "take" M.H. and J.H.

orientation for placement in October 2017, were given an application packet, but had not submitted the application and waited until April 2018 to seek placement.

On May 15, 2018, the social worker learned that the uncle and girlfriend had submitted their application and passed Live Scan, but still needed to attend mandatory classes and have a home inspection. It was not recommended that they be considered for placement at this time.

The maternal uncle and girlfriend "occasionally" visited the children during the scheduled sibling visits. They began visits with L.H. and E.H. in November of 2017. Since the previous hearing in February 2018, they had visited twice in March and once in April.

At the May 29, 2018, section 366.26 hearing, father was present; mother was not. There was no objection to the proposed plan for M.A. and G.A., and guardianship was granted.

Regarding M.H., J.H., L.H., and E.H., father objected to the proposed plan and stated he wanted them to go together with his "in laws", maternal uncle and girlfriend, who were present. It was noted that they were currently in the approval process, but according to father's counsel, "something happened" back in October 2017, when the two attended orientation but likely did not understand the process. Counsel for the children stated E.H. had been with his current caregivers his entire life, and L.H. for almost half her life, and asked that E.H. and L.H. not be placed with people who had only visited them a few times.

The CASA worker, when asked, opined that M.H. and J.H. were doing well in their current placement and the only concern was they be allowed visitation with their older brothers, as they had a bond with them.

The juvenile court set the matter for a contested hearing as to the four children. Addressing the maternal uncle and girlfriend, the juvenile court advised them:

> "Meet with the social worker because obviously to be in a position to be considered, you have to complete everything. Now, I'm not saying that just because you complete everything it's going to get done. Hold on. Let me finish.… [E]verything needs to be done so that when we set up the next hearing, you will have at least the standing to make an argument or the request that it would be in the children's best interest to do this. Because right now, until that happens, there is no basis for the Court to even contemplate the idea of doing this."

When counsel for the children expressed concern that the relatives were only now applying when the case had been in court for some time, the juvenile court stated those were factors it would take into consideration at the next hearing.

A contested section 366.26 hearing for father's four children was continued to June 21, 2018. Father's counsel reported that father was recently sentenced and would be transferred to the Department of Corrections for custody.

An addendum section 366.26 report filed June 20, 2018, reported that the social worker visited M.H. and J.H. on June 13, 2018, and conducted a test using a practice tool used to assess a child's perspective on permanency planning. Six-year-old M.H.'s responses indicated her current placement was going well. Four-year-old J.H.'s responses indicated the same. When asked, both girls stated they wanted to remain in their current situation. While they wanted to visit siblings and relatives, they did not want to live with maternal uncle and his girlfriend. The current caregivers also indicated that they would be willing to consider adopting the girls at a later date.

While L.H. and E.H. were too young to express a preference, E.H. had never lived with anyone else. His caregivers began visiting him in the hospital and did so until he was released into their care at one month old. L.H. began living with the caregivers at the age of 17 months and was now two and one-half years old.

The report also noted that, as of June 19, 2018, maternal uncle and girlfriend had not yet completed the RFA process. Two interviews still remained to be completed before a report could be written. The agency continued to recommend that the children

remain with the current care providers: with guardianship for M.H. and J.H. and termination of parental rights and adoption for L.H. and E.H.

At the contested section 366.26 hearing June 21, 2018, father's counsel argued that the maternal uncle and girlfriend relative placement should be pursued further so that the children could be "adopted" together.[6]

Counsel for the children urged the juvenile court to proceed with the contested hearing, as father's parental rights to M.H. and J.H. would not be impacted by the recommendation of guardianship, and the two wished to stay where they were. The CASA agreed with children's counsel that M.H. and J.H. were happy in their current placement and wished to stay there. As to E.H. and L.H., counsel for the children recommended termination of parental rights and adoption by the caregivers. E.H. particularly had never known any other caregiver. There was also concern that the maternal uncle and his girlfriend might not be approved, leaving the children in limbo longer. The CASA echoed this sentiment and noted that the current caregivers were willing to have sibling visits after adoption.

The juvenile court questioned why it had taken the maternal uncle and his girlfriend so long to go forward with their request for placement. Maternal uncle's girlfriend, who was in the audience, stated that it took them so long to apply for placement because they were living with the "grandpa" in October when they went to orientation and they did not have room for the children at that time. They then found a home and had to remodel it for the kids. She claimed she had known the children for

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6 Although father's counsel argued maternal uncle and girlfriend's placement be pursued further so that the children could be adopted together, the record seems to indicate that maternal uncle and girlfriend were only seeking legal guardianship at this point, and earlier father had stated that maternal uncle might be able to "take" the older two.

over five years and they had always had positive visits with them. Both maternal uncle and girlfriend stated that they had completed everything but the final interview.

Counsel for the agency noted that the children were detained in May of 2017, the maternal uncle and his girlfriend first applied for placement in October of 2017, and did not begin visiting with the children, at least the youngest two, until November of 2017.

Paternal grandfather, who was also in the audience, stated that the children had a very large family of aunts, uncles, grandparents, and great-grandparents who loved them and cared for them, and that they were all somewhat unfamiliar with the process of how to visit the children or apply for placement.

Counsel for the children acknowledged the extended family but questioned where the family was when the children were detained. She then noted that the children had been in stable placements and felt safe and secure, which was "the most important thing." Counsel opined that it would be "extremely detrimental to now take them and move them to other placements."

Counsel for the agency argued that, this late in the case, the juvenile court was required to look at the situation, which she acknowledged was complicated, "not from the relative's perspective, not from the parents' perspective," but "from the children's perspective."

The juvenile court, in its ruling, ordered legal guardianship for M.H. and J.H., and terminated parental rights as to L.H. and E.H., freeing then for adoption. In doing so, the juvenile court stated the following:

> "These are extremely difficult cases. And when you have people, both relatives and caretakers, that come to the lives of these children and the one—on the one hand, it's an extremely difficult decision to make because you have competing people that love these children, but it's a good problem to have. [¶] The big ugly problem is when you have nobody that's interested. And here, it makes it extremely difficult to make this decision, but at the same time, it seems to me that regardless of what decision the Court makes, it's going to end up in a situation where you have

people that care about these children. And so but from the perspective of the children, this is a situation where because of circumstances, and I think there are different circumstances and different issues and so forth that come into play, these children were placed with these—in these foster home placements because apparently for whatever reason, there was no parent or guardian willing or able to take these children. And apparently there was not a suitable relative that was identified early in the case that were willing and able and would qualify for placement of these children. And so for those reasons, these children were placed in foster homes, apparently they're placed in two separate foster homes, and so we have a situation now where today is the hearing where the Court needs to make a decision in this case and the decision needs to be made on what's in the best interest of the children, not what's in the best interest of the relatives or the foster parents or anybody else. It's what's in the best interest of the children. [¶] And with respect to the two younger children, L[.H.], E[.H.], especially E[.H.], E[.H.] has only known one family. And L[.H.], she's still only two years old, but she's been in this home for probably most of her life. And so they're not old enough to speak to state any preference. [¶] Now M[.H.] and J[.H.], apparently, are old enough, and according to the social worker have been able to express a preference of where they want to live and so forth. They had indicated that they want to stay where they're at, but they still want to visit with their siblings and relatives. They don't want to live with their aunt and uncle. So if that statement is true, the statement of the aunt and uncle, if they were asked where they want to live, they have stated a preference. And their preference is stay where they're at and not be placed with their aunt and uncle. So as difficult as the decision is to make, I have to look at it from the perspective of the children, which is required by law."

DISCUSSION

I. DID THE JUVENILE COURT ERR WHEN IT FOUND L.H. AND E.H. ADOPTABLE AND TERMINATED FATHER'S PARENTAL RIGHTS?

Father argues the juvenile court erred when it found L.H. and E.H. (together the children) adoptable and terminated his parental rights. Father's argument is two-part: First, that the section 366.26 report was inadequate because it did not fully investigate or explain the 2015 substantiated referral for inadequate supervision of a child by the current caregivers, who were the proposed adoptive parents. Father contends this referral would likely cause a problem with the approval of their adoption home study and prevent

the caregivers from adopting the children. Second, father argues that the juvenile court erred when it found the children "generally" rather than "specifically" adoptable by the current caregivers. Father argues the current caregivers' assurances of continuing sibling visitation led to the finding of adoptability, and if the current caregivers are not able to adopt the children, "there was insufficient evidence that sibling relationships would not be interfered with" when the children have to be moved to another adoptive home. Finally, father contends both issues violate the requirement that the children will be adopted "within a reasonable time." We affirm.

"[A] parent and a child share a fundamental interest in reuniting up to the point at which reunification efforts cease. [Citation.] However, the interests of the parent and the child have diverged by the point of a [366].26 hearing to select and implement a child's permanent plan." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.) "Consequently, after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability." (*Ibid.*)

"'"A section 366.26 hearing ... is a hearing specifically designed to select and implement a permanent plan for the child."'" (*In re D.M.* (2012) 205 Cal.App.4th 283, 289.) The goal is to provide a child with "'"a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child."'" (*Ibid.*) "At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship, or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans." (*In re S.B.* (2008) 164 Cal.App.4th 289, 296–297.) "'Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child's best interests are other, less permanent plans, such as guardianship or long-term foster care considered.' [Citation.] Adoption, of course, requires terminating the natural parents' legal rights to the child; guardianship and long-term foster care leave parental rights intact." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 574.)

Thus, a court must first assess whether a child is likely to be adopted. "A finding of adoptability requires 'clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.'" (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) "If the court finds the child is likely to be adopted within a reasonable time, the juvenile court is required to terminate parental rights *unless* the parent shows that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1)(A) and (B)." (*Ibid.*; *In re S.B., supra,* 164 Cal.App.4th at pp. 296–297.)

On appeal, father argues first that the agency's assessment of the prospective adoptive family was deficient pursuant to section 366.21, subdivision (i)(1)(D), which requires the report, inter alia, to include:

> "A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, … particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption …."

The prospective caregiver assessment for the children included a social history of their relationship and employment; supportive relatives who lived nearby; that the caregivers received full clearance through Live Scan record check, including the Department of Justice, Child Abuse Index Check and the Federal Bureau of Investigation; the caregivers relationship with the children; their motivation for seeking adoption, and the results of a Child Welfare Service (CWS) check, which noted the caregivers did not have a history of CWS open cases, but had one agency referral for general neglect in October 2014, which was found inconclusive, and a second for general neglect in July 2015, which was found substantiated, as "the child was inadequately supervised."

Father contends that the allegations of general neglect were not adequately explained and would have an impact on whether the caregivers could pass a home study and qualify as adoptive parents. However, as respondent points out, father did not object to any deficiencies in the assessment before the juvenile court. Consequently, he forfeited his challenge on appeal that the assessment was deficient because it did not comport with statutory requirements. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) However, he did *not* forfeit his "right to argue on appeal the sufficiency of the evidence supporting the juvenile court's finding of [the children's] adoptability." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561.)

Although father's claim of insufficient evidence is not waived, it lacks merit. Father challenges the finding that L.H. and E.H. were "generally" adoptable, asserting that they should have been found to be "specifically" adoptable because of the current caregiver's willingness to continue sibling visitation after adoption. Father asserts that, if the current caregivers were not able to complete the adoption process, the children might be placed with someone who was not amendable to sibling visitation. We conclude the record contains substantial evidence from which the juvenile court could find clear and convincing evidence L.H. and E.H. were generally adoptable.

A child is either "generally" or "specifically" adoptable. A child is generally adoptable if the child's traits, e.g., age, physical condition, mental state, and other relevant factors do not make it difficult to find a person who will adopt him or her. On the other hand, if a child is deemed adoptable only because of the caregiver's willingness to adopt, the child is specifically adoptable. (See *In re R.C.* (2008) 169 Cal.App.4th 486, 492–494; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.) If a child is generally adoptable, "the suitability or availability of the caregiver to adopt is not a relevant inquiry." (*In re R.C., supra,* at pp. 493–494, fn. omitted; see also *In re Carl R., supra,* at p. 1061.) "[T]he existence of a prospective adoptive parent, who has expressed interest in adopting a dependent child, constitutes evidence that the child's age, physical

condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child. In other words, a prospective adoptive parent's willingness to adopt generally indicates the child is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family." (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1312; see also *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649–1650.)

When the child is specifically adoptable because of a particular family's willingness to adopt the child, the trial court must determine whether there is a legal impediment to adoption. (*In re Carl R., supra,* 128 Cal.App.4th at p. 1061.) *In re Carl R.* found that a "child who is specifically adoptable and who will need total care for life is at high risk of becoming a legal orphan if parental rights are terminated and the prospective adoptive family is later determined to be unsuitable." (*Id.* at p. 1062, fn. omitted.) Thus, the court must consider more than whether there is a legal impediment to adoption; the court must consider whether the prospective adoptive parents can meet the child's needs. (*Ibid.*)

We review the juvenile court's finding that the children were adoptable for substantial evidence. (*In re Michael G., supra*, 203 Cal.App.4th at p. 589; *In re C.F.* (2011) 193 Cal.App.4th 549, 553.) In applying this standard, we construe the evidence in the light most favorable to the court's order, giving the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Gregory A., supra,* 126 Cal.App.4th at p. 1562; *In re C.F., supra,* at p. 553.)

At the section 366.26 hearing, the juvenile court found by clear and convincing evidence that L.H. and E.H. were adoptable. Although the juvenile court did not specify that it was finding the children to be "generally" or "specifically" adoptable, it is assumed they were found to be generally adoptable as there was no discussion on the alleged need to find the children specifically adoptable.

The adoption assessment dated January 29, 2018, stated that the children were deemed adoptable and that they were residing with a prospective adoptive family who was willing to complete an adoption home study. The May 29, 2018, section 366.26 report by the agency stated that the current caregivers expressed a desire to pursue adoption for the children and would consider an open adoption to allow the children to stay in contact with their siblings. In the report, two-and-one-half-year-old L.H. was described as on par with her developmental stages, she was developing age-appropriate motor skills, was understanding simple words, and developing social skills. One-year-old E.H. had no medical issues, but was receiving once a week in home Bright Start Services. The social worker reported that, while the two were too young to make any statements concerning their placement and the prospective adoption, the children were observed during the review period to be happy and succeeding in their current placement. An addendum report of June 21, 2018, again recommended that the children be freed for adoption with their current care givers. These characteristics support a finding that the children were generally adoptable.

Father's argument that any other placement would likely result in the lack of visitation between the children and their siblings, is pure conjecture. Even if the current caregivers are unable to adopt, there is no reason to believe that a different suitable home, which would allow sibling visitation, could not be found.

Father finally maintains that there was no clear and convincing evidence that adoption would take place within a reasonable time. He bases this argument on the fact that the prospective adoptive family would likely not be approved, and the children would need to be placed somewhere else. However, while it is true that a finding of adoptability requires "clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time" (*In re Zeth S.* (2003) 31 Cal.4th 396, 406), as noted earlier, "'a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive

parent *or by some other family*.'" (*In re Asia L.* (2003) 107 Cal.App.4th 498, 510.) In this case, there was clear and convincing evidence that the children would be adopted within a reasonable time.

II. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO CONTINUE THE SECTION 366.26 HEARING TO ALLOW COMPLETION OF THE RELATIVE PLACEMENT ASSESSMENT?

Father contends the juvenile court abused its discretion when it failed to continue the section 366.26 hearing until after maternal uncle and girlfriend completed the RFA process, especially since relatives are to be afforded preferential consideration for placement under section 361.3, subdivision (c). We disagree.

We begin with section 361.3, on which father relies, which gives "preferential consideration" to a relative's request for placement, which means "that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) "'When considering whether to place the child with a relative, the juvenile court must apply the [section 361.3] placement factors, and any other relevant factors, and exercise its independent judgment concerning the relative's request for placement.'" (*In re A.K.* (2017) 12 Cal.App.5th 492, 498.)

"The relative placement provisions in section 361.3 apply *when a child is taken from her parents* and placed outside the home pending the determination whether reunification is possible. [Citation.] The relative placement preference also applies to placements made after the dispositional hearing, even when reunification efforts are no longer ongoing, *whenever a child must be moved*. [Citations.] However, the relative placement preference does not apply to an adoptive placement; there is no relative placement preference for adoption. [Citations.] Instead, at the section 366.26 hearing,

the court must apply the caretaker preference under section 366.26, subdivision (k)."[7] (*In re A.K., supra,* 12 Cal.App.5th at p. 498, italics added.)

Here, the children were detained in May of 2017. It was not until April 9, 2018, almost a year after the children were detained and seven weeks before the scheduled section 366.26 hearing, that girlfriend contacted the agency and requested legal guardianship, not adoption, of all four of the younger children. Girlfriend was asked to have the maternal uncle contact the agency, as he was the actual relative. Three weeks later, on April 30, 2018, the uncle contacted the agency to begin the RFA process.

A social worker who met with the couple on May 2, 2018, learned that maternal uncle and girlfriend had attended an earlier orientation for placement in October 2017, were given an application packet, but had not submitted the application and waited until April 2018 to seek placement. On May 15, 2018, the social worker learned that the maternal uncle and girlfriend had submitted their application and had passed Live Scan, but still needed to attend mandatory classes and have a home inspection. The maternal uncle and girlfriend "occasionally" visited the children during the scheduled sibling visits. Since the previous hearing, they had visited twice in March and once in April.

By the time of the section 366.26 hearing in May of 2018, when the issue of maternal uncle and girlfriend's RFA was first discussed, it was a year past detention, and there had been no determination that a new placement had to be made. Moreover, at the time the request was made, family reunification services had been terminated to mother in February of 2018; father was never granted reunification services to begin with. Thus,

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[7] Section 366.26, subdivision (k) provides, in relevant part: "Notwithstanding any other law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan of adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being."

the focus of the dependency proceedings had shifted from father's interest in reunification to the children's interest in permanency and stability. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 223 ["By the time a permanency hearing has been set, the child's private interest in a safe, permanent placement outweighs the parent's interest in preserving a tenuous relationship with the child"].)

In June 2018, at the time of the contested section 366.26 hearing, L.H. and E.H.'s interest in permanency and stability with their existing caregivers was strong. Because E.H. was detained at birth, it was the only home he had known. L.H. was slightly older, but had spent a significant portion of her life in this placement. The older two children, M.H. and J.H. were in the home of their prospective guardians. M.H. was clear that, while she wanted to visit siblings and relatives and was "willing" to have overnight visits with relatives, she did not want to live with maternal uncle and girlfriend. This was not only reported by the agency, but confirmed by the CASA at the section 366.26 hearing, who stated both M.H. and J.H. always said they wanted to be with their current placement family.

Father also argues that the juvenile court abused its discretion by denying his request for a continuance of the section 366.26 hearing because he had shown good cause for the continuance, i.e., the need to allow the agency to complete the assessment of maternal uncle and girlfriend. We find no abuse of discretion.

Section 352 provides that "if it is not contrary to the interests of the minor child, a trial court may grant a continuance in a dependency case for good cause shown, for the period of time shown to be necessary, and further provides that when considering whether to grant a continuance the court 'shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.'" (*In re B.C.* (2011) 192 Cal.App.4th 129, 143–144.)

"In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance." (§ 352, subd. (a)(3).) A juvenile court's ruling on a motion to continue pursuant to section 352 is reviewed for abuse of discretion. (*In re B.C.*, *supra*, 192 Cal.App.4th at p. 144; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

Here, as noted by respondent, no actual motion to continue the contested section 366.26 hearing was made. Father's counsel simply argued that "relative placement should be further pursued." Counsel for the children noted this case was on for a contested section 366.26 hearing and was not a placement hearing as implied by father's counsel. Counsel opposed any continuance, stating that the maternal uncle and girlfriend were not actually approved and it was not known whether they would be. Counsel noted that the children were in stable placements where they had been for a significant time and asked that the juvenile court proceed with the section 366.26 hearing and follow the recommendations regarding the four children.

Even assuming this request was timely, there was no error in denying the request because father did not make a showing of good cause for the continuance. In dependency cases, continuances are disfavored, shall be granted only upon a showing of good cause, and shall not be granted if to do so would be contrary to the child's interests. (§ 352, subd. (a)(1); *In re David H.* (2008) 165 Cal.App.4th 1626, 1635; *In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1186–1187.) Substantial weight must be given to the child's need for prompt resolution of his custody status, the need to provide the child with a stable environment, and the avoidance of damage to the minor resulting from prolonged temporary placement. (§ 352, subd. (a)(1).) "'[T]ime is of the essence in offering permanent planning for dependent children.'" (*In re Gerald J.*, *supra*, at p. 1187.) The

juvenile court is accorded broad discretion in determining whether to grant a continuance. (*Id.* at pp. 1186–1187; § 352, subd. (a).)

At the time of the section 366.26 hearing, the children's dependency case had been pending for over a year. As discussed, *ante*, the focus of the proceedings had shifted from father's interest in reunification to the children's interest in permanency and stability. In light of L.H. and E.H.'s strong interest in attaining permanency and stability, we find the juvenile court did not abuse its discretion by refusing to delay the section 366.26 hearing for the purpose of assessing a potential caregiver with whom none of the children had ever lived, when L.H. had lived a large part of her life and E.H. had lived his entire life with caregivers with whom they were closely bonded, who were willing to adopt them. It cannot be said that the juvenile court abused its discretion in denying the request for continuance.

DISPOSITION

The juvenile court's orders are affirmed.

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FRANSON, Acting P.J.

WE CONCUR:

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SMITH, J.

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SNAUFFER, J.